

## DELTA PROTECTION COMMISSION

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## Minutes for the Meeting of the Delta Protection Commission

6:30 p.m. Thursday, October 24, 1996

Jean Harvie Community Center  
14273 River Road, Walnut Grove1. Call to Order/Roll Call.

The meeting was called to order at 6:40 p.m. Commissioners in attendance: Calone, Freeman, Herendeen, Chairman McCarty, McGowan, Mello, Potter, Salmon, Sekelsky, and Yates; Commissioner Nottoli arrived at 7:10 p.m. Commissioners absent were: Broddrick, Curry, Vice Chair Fargo, Ferreira, Murphy, Simas, Thomson; and Torlakson.

2. Public Comments.

There were no public comments.

3. Minutes of September 26, 1996 Meeting.

The draft minutes were approved by voice vote on a motion by Commissioner Herendeen, and a second by Commissioner Mello; Chairman McCarty abstained.

4. Chairman's Report.

Chairman McCarty reported the next meeting is scheduled for Thursday, November 21, 1996 at 6:30 p.m. in the Jean Harvie Community Center. Due to possible attendance conflicts, he asked Commissioners to contact staff and noted the November and December meetings are the **third** Thursday of the month.

5. Attorney General's Report.

Richard Frank noted that the U.S. Supreme Court recently decided to decide a case with significance to the Delta. It is a case from Lake Tahoe, Suitum v. Tahoe Regional Planning Agency, and deals with the question of whether transfer of development rights programs are legitimate and how they apply to private property rights. Transfer programs are in use in different parts of the State, there are mitigation bank programs, there are natural community planning programs, and how the Court rules could affect the legal viability of such programs throughout the State. The case should be decided no later than next June.

6. Executive Director's Report.

Margit Aramburu reported she had met with Dave Cox at Department of Parks and Recreation regarding the recreation study, she said that because the study is taking longer than expected, a preliminary report will be brought to the Commission in January. She reported the 10% Penalty Fund as of end of September 1996 was \$2,103.10; CALFED will hold a one day workshop on habitat enhancement on Tuesday, November 19; Cosumnes Preserve has printed a Field Checklist of Birds of the Cosumnes River Preserve; September/October Issue of Western Water is about the CALFED process, titled "Building a Delta Consensus"; there is a new national pumpout symbol to identify marinas and parks that have pumpout stations; the Sacramento County Redevelopment Agency has applied for a grant from Office of Historic Preservation, and was approved through the first round of applications--a grant is being sought to stabilize eight buildings and to develop a long term solution; Vice Chair Heather Fargo wrote an article on "Volunteering in California's State Parks"; and the Deltakeeper has served notice of intent to sue the Port of Stockton and two tenants for 21,700 violations of the Clean Water Act by allowing contaminated stormwater to run off into the Ship Channel and the San Joaquin River. She reported that the Solano County Board of Supervisors adopted its General Plan amendment on October 22, 1996. The San Joaquin County Board of Supervisors approved a resolution this week calling on the Bureau of Reclamation to finish the San Luis Drain to keep polluted agricultural runoff out of the San Joaquin River and the Delta by sending the drainwater to the Pacific Ocean. She noted that the company, Pima Gro, called the Commission's offices and said they want to conform with the Commission's mandate and want to vacate sites where they currently have permission to place biosolids.

7. Pending Projects Memo:

There were no questions or comments.

8. Briefing and Possible Adoption of Position Regarding Proposition 204:

Ms Aramburu noted she had distributed an excerpt from the voter pamphlet with more information about Proposition 204; there is no formal group or printed material opposing Proposition 204.

Mr. Frank noted he had prepared a written memo dated October 9, 1996 which states that under California law the Commission is authorized to take a position on the measure and engage in purely informational activities; it is precluded from spending State time, funds or resources to campaign for partisan measures. He encouraged calls from Commissioners if there are questions. He noted that staff has searched for information on both sides of the issue and made available materials on both side.

Commissioner Yates asked if there is any difference between agency representatives versus other members; Mr. Frank said as a State official designated to sit on the Commission, there is no difference. He noted that any vote would represent the position as the parties as members of the Delta Protection Commission and in no way commits the agency they represent.

Linda Adams, consultant to the Senate Commission on Water and Agriculture, noted she is volunteering her time tonight. She said Proposition 204 will provide benefits for the Delta and the original legislation represents two years of negotiations from many groups and noted that there is very limited opposition and support from many, many groups and individuals, and editorial support. She said Proposition 204 will address water issues in many areas of the State, but about two thirds of the funds are for the Delta including restoration (CVPIA, Shasta Temperature Device, fish screens); Category III projects (Bay Delta Accord); Delta Levees Subventions program; environmental enhancement of the Interim South Delta project; CALFED Bay Delta program--ecosystem restoration (390 million dollars for "common elements"). The funding will not pay for a water conveyance facility; the final negotiations included Delta interests and participation by Senator Johnston. She noted additional funds will pay for upgraded treatment plants, water recycling, agricultural drainage treatment to clean up drainage entering the Delta from the watershed, and watershed enhancement. She noted a 430 million dollar match for the ecosystem funding, in addition to 550 million Clean Water Act match, from the federal government. She noted this was a consensus based process.

Commissioner Salmon asked for clarification about the San Luis Drain; Ms Adams said there is a program for low interest loans to water agencies for agricultural drainage water treatment; the priority is for on-site treatment; this money is not to go toward constructing the San Luis Drain.

Commissioner Potter commented that he observed some of the negotiation meetings and noted that Senator Costa insisted that agriculture, the urban user and the environmental community all agreed on the language in SB 900/Proposition 204. He commended Senator Costa and Linda Adams.

Commissioner Mello said he was not aware of Delta interests that participated; the North Delta Water Agency did not participate; and he said he felt the Delta had been left out of the negotiations. He is concerned that ecosystem restoration will come at the loss of agriculture in the Delta and the Delta economy. He asked if agricultural lands will be retired; Ms Adams said there is no agricultural land retirement funding in the Proposition. Commissioner Mello said there has been discussion of retiring agricultural land in the Delta for the environmental projects.

Commissioner Salmon asked if the Natural Heritage Institute would be funded through the bond act; Ms Adams said there is no funding for groups; the general obligation bonds will provide funds for long-term capital outlay. He asked if the water transfer facilities are for CALFED; Ms Adams said the transfer project is a specific project in San Diego.

Commissioner Potter noted that funds in the proposition could be used for levee work, as levee stability is a common element. Regarding loss of agricultural land, SB 34 allows acquisition of a 400 foot wide band to control subsidence; that is the only agricultural land retirement in Proposition 204.

Chairman McCarty said he participated on a work group that advised Senator Johnston during the conference committee; he said all elements had to support any one element. He feels there is nothing in the proposition that would harm Delta interests.

Commissioner Calone asked where the ecosystem enhancement funds would be spent if not on agricultural lands. He said agricultural lands have been purchased, and those lands have been left fallow. Commissioner Potter suggested two typical projects: on Twitchell Island a setback levee was constructed and the area between the old and new levees would be restored; and on Staten Island habitat could be enhanced on waterside berms and channel islands. In addition, fish screens could be installed.

Chairman McCarty said enhancement projects could include shallow water habitat; shaded riverine aquatic habitat; and channel islands enhancement; these activities would not include wholesale retirement of agricultural lands.

Ms Aramburu said there are no speakers available to speak against the Proposition 204, but the written material indicates concern about passing bonds when the projects are not specifically described.

Chairman McCarty noted that the elements in the bond act are acceptable to urban, agriculture and environmental groups.

Ms Adams noted no Delta projects can be funded until the final environmental document is approved.

Commissioner Mello said the projects are unknown; CALFED has developed three alternatives and common elements, but the information is very general. He thinks the purpose of CALFED is to increase the number of endangered species to a point where they are no longer endangered to allow continued export of water from the Delta. He said he attended a meeting recently where CUWA showed a restoration plan which showed flooding of all of Tyler Island.

Chairman McCarty said it is important to differentiate between the bond act and the CALFED process.

Commissioner Yates agreed and suggested agricultural interests should get involved in the CALFED process, as is the Department of Food and Agriculture. He agreed the funding program and the policy development are different.

Chairman McCarty said there are lots of environmentalists, and not a lot of agricultural interests at the CALFED meetings.

Commissioner Mello expressed concern that he has to run his farm and can't spend time at meetings.

Commissioner Yates said organizations should attend and represent agricultural interests.

Chairman McCarty said its important to be educated about the CALFED process and to communicate with CALFED.

Chairman Salmon asked how many BDOC members represent agriculture; Chairman McCarty said about six or seven, about one-quarter.

Commissioner Mello said the 25 million dollars for Delta levees is only about two years worth of funding; Commissioner Potter said its like most of the programs, the future funds will be allocated later by the Legislature.

Chairman McCarty said two years of funding matches the CALFED timeline; once the CALFED plan is approved, the levee program may be moved to the the CALFED program. He noted that the emergency levee program started at the Commission's Levee Subcommittee.

Commissioner Yates asked if landowners or farmers that will directly or indirectly benefit would have a conflict of interest; Mr. Frank said any Commissioner that would benefit differently, uniquely, than a member of the general public, it would be wise to abstain under the conflict of interest code. He said if there is no reasonable way to know, there would be no conflict.

Chairman McCarty said he would abstain, due to a possible project.

Commissioner Yates said he would abstain.

Commissioner Salmon said he would abstain.

Commissioner Calone said he would abstain.

On a motion by Commissioner Freeman, and a second by Commissioner Potter, the Commission directed staff to prepare a letter indicating support of the Commission, approved by show of hands, 6-1-4 (Commissioner Mello voted no, Commissioners McCarty, Yates, Salmon and Calone abstaining).

9. Consideration of Resolution of Appreciation for Assemblyman Hannigan.

Ms Aramburu said she would like to add to the draft resolution "WHEREAS, Assemblyman Hannigan has served as the ex-officio member of the Delta Protection Commission representing the California State Assembly since the Commission's first meeting".

On a motion by Commissioner Potter and a second by Commissioner Salmon the draft resolution was approved by a voice vote.

10. Briefing on In-Channel Islands and Waterside Berms.

Ms Aramburu noted the channel islands are topic of consideration in several different arenas: CALFED has included protection and enhancement of habitat on channel islands as a "core" element of their program; the Estuary Project has been sponsoring a work group in the Delta area focusing on channel islands; and DFG has been working on mitigation for impacts to habitat on levees, some of that mitigation has been on channel islands.

She introduced Sally Shanks of M&T Staten Ranch, who described the projects on Staten Island from slides of the waterside berm projects and channel island projects (20 slides were shown).

Sally Shanks said the projects were started after talking to DFG and DWR about the loss of habitat. She said there have been four sets of projects. She said the waterside habitat work will also protect the main levees on the island. She noted that the plants have grown on some sites with no planting. She also commented that the regulatory approvals were extremely difficult and expensive to obtain. She said the first project was 2,000 feet and cost \$30,000; the two lagoons protected about half mile of levee and cost \$60,000; then they brought in the State and for \$560,000 they protected 6,000 feet. She said work on the levees requires no mitigation, because there is no habitat. Her opinion is that the channel islands are the richest habitat in the Delta; they had to study eight endangered species. She encouraged folks to come and look and observe the sites.

Ms Aramburu passed around photographs of the construction of the channel islands, and noted that the briefing memo describes the projects and some history about the channel islands.

Ms Shanks said the Channel Island work should be ready to protect the channel islands; Staten Island has offered two possible sites for protection, but there is no consensus about moving forward.

Commissioner Mello commended Ms Shanks for her work and asked if the projects have restricted channel capacity; Ms Shanks said no, that issue was analyzed by DWR and they determined there would be no loss of channel capacity. She described the evolution of the design of these enhancement projects, and while its getting very difficult to get projects approved, she believes it is the way to go. Commissioner Mello described a possible, similar project being considered for Tyler Island; he expressed a preference for using dredged material for creating habitat; Ms Shanks said none of the "dirt" on the Staten Island projects was imported.

Ms Shanks said she is part of the CALFED ecosystem work group, and noted that DFA staff was there defending Delta agriculture from conversion. She said there are goals of restoring tidal marsh in the Delta, and the cheap and easy solution would be flooding of agricultural lands, but there are alternatives on other sites such as Franks Tract and other upland areas which are not in agriculture. The mitigation associated with levee maintenance is very expensive.

Ms Aramburu reviewed attachments to the staff report including comparison of channel islands over time and a map of project sites on Staten Island.

Chris Kjeldsen pointed out that the in-channel island workshop underscored the values of these sites to the Delta ecosystem and compared them to the old growth redwoods. He applauded the work on Staten Island and supported continuing work on the water side of the levees, and urged support of continuing this type of work.

Chairman McCarty thanked Sally Shanks and Chris Kjeldsen for their comments.

11. Consideration and Possible Adoption of Position of Support of "Coordination of Efforts to Promote the Conservation and Restoration of Sacramento-San Joaquin Delta In-Channel Islands."

Ms Aramburu said as a follow-up matter, the Commission can become a signatory to a "statement" which was drafted by the SFEP's In-Channel Islands Work Group, and circulated through U.S. Fish and Wildlife Service and Department of Fish and Game, and has the "blessing" of those agencies. The statement outlines the values of the in-channel islands and the desire of the signatories to support work to conserve and restore the islands. The Commission's position would not generate any financial responsibility and could be revoked at any time the Commission desired.

The Commission's Plan includes Recommendation R-3 which recognizes that "undeveloped channel islands provide unique opportunities for permanent wildlife habitat in the Primary Zone. A strategy should be developed to encourage permanent protection and management of the channel islands. Protection may include: acquisition, conservation easements, or memoranda of understanding. Management may include: protection from erosion, controlling human access, or habitat management such as planting native plants and removing exotic plants..."

Becoming a signatory to the attached statement would be a first step toward implementation of the Commission's recommendation.

On a motion by Commissioner McGowan, and a second by Commissioner Salmon, the Commission agreed unanimously to become a signatory to the statement.



12. Consideration and Possible Adoption of Revised Work Plan and Budget for FY 96-97.

Chairman McCarty noted that earlier this year, the Commission adopted a budget and work program until January 1, 1997, when the Commission was slated to sunset. Now that the Commission has been extended, the Commission must consider a new budget and work program for the full fiscal year.

Ms Aramburu noted that the Commission had received three items: an informal accounting of last fiscal year with about \$87,000 remaining; the FY 96-97 budget change proposal which was submitted to cover the Commission's time extension, the Commission's budget is \$288,000 dollars, with the staffing at the same levels--two full time staff, and two students--and some funds available for consultants; and a revised work program for the full year which will basically extend the Commission's work over the full year. There are several items which the Commission may want to pursue with assistance of a consultant; if the Commission desires pursuit of those topics, more specific information about studies and budgets will be brought to you for your approval. There are no new major projects, but includes monitoring with the assistance of Teale Data Center and analysis of the impacts of CALFED on Primary Zone land uses, as suggested by Commissioner Ferreira.

In the past, the Commission has directed staff to request that surplus funds be applied against the Commission's original loan from the ELPF; I would be glad to pursue that again on the Commission's behalf.

Commissioner Calone noted that the Budget and Finance Subcommittee had recommended that the surplus funds be directed toward paying off the original debt.

Commissioner Potter suggested that next year the Commission consider meeting every other month, with the "off" month being reserved for subcommittee meetings; Ms Aramburu noted the revised legislation requires the Commission meet at least every other month. She noted there is a full calendar year agenda, due to the need consider any appeals within 60 days. She agreed with the concept of alternating Commission meetings and Subcommittee meetings.

Chairman McCarty noted that the Commission's work load will not lessen due to the CALFED process, and the need for monitoring that process and incorporate as many of the Commission's policies into the CALFED program as possible.

On a motion by Commissioner Calone and a second by Commissioner Nottoli, the Commission voted unanimously to adopt the revised budget and work plan and to direct staff to request that the surplus funds be directed toward retirement of the Commission's original loan from the Environmental License Plate Fund.

13. Commissioner Comments.

Commissioner Calone reported that East Bay Regional Park District (EBRPD) had posted notices last Thursday at bait shops and launch ramps prohibiting hunting in Big Break. EBRPD came to the Commission and said they would not prohibit hunting unless it were to become a safety problem. He passed out copies of the notice that was posted two days before the start of hunting season. He commented the agency has too much money and is forcing people off public lands; water-covered lands. He felt the approach was untimely and prejudicial against duck hunters. He had been concerned about EBRPD management of Brown's Island, with prohibition of all public access and use, including hunters. He is upset because there is another bond issue on the ballot, the money that they have to improve existing lands and not to buy more lands that are unmanaged. Commissioner Calone thanked Department of Fish and Game which agreed to allow hunters on water-covered lands.

Commissioner Mello asked about the need for election for the Reclamation District representatives; Chairman McCarty said yes, the RD representatives must be elected. Ms Aramburu noted that none of the other Commissioners need to be re-appointed. She noted that Commissioners Freeman, Herendeen, and Torlakson would be leaving the Commission. Chairman McCarty noted that election of officers would be held in March.

Ms Aramburu said Commissioner Calone had called her about the EBRPD-Big Break issue; the Commission did receive a letter from Pat O'Brien, General Manager from April 1994 indicating that hunting would continue in Big Break. The EBRPD staff was not aware of the letter. She said she would update the Commission at the next meeting.

Commissioner McGowan asked if the matter should be agendaized at the next meeting, and suggested sending a letter to EBRPD. Chairman McCarty directed staff to agendaize the matter.

14. Adjourn.

The meeting was adjourned at 8:30 p.m.